



BZA MINUTES
TUESDAY, APRIL 30, 2009 – 5:30 p.m.
HUNTINGTON BLDG. 307 VINE ST.

Present were: Mr. Roberts, Mr. Wagner, Mr. Gilmore; Absent were Mr. Miles and Mr. Stem. **City Staff:** City Attorney, Phillip Crego, Otis Spriggs, Thomas White, Erick Woodruff

Counsel for Appellant: Mr. Dennis Zolper/ Charles Mooney Sr.

Counsel for Opposition: Mr. Jim Lyons

Minutes Approval: Motion was made by Mr. Wagner, 2nd Roberts. Motion carried. Minutes approved.

Mr. Gilmore: I would like to speak to both parties, with your attorneys and not belabor the issue. If I gave both parties 10 minutes will that be helpful? Do you even want it?

Mr. Mooney: Introduced Attorney, Dennis Zolper, Jonesboro, and co- counsel. He is working with me in this regard. I understood there would be no additional proof taken. I do think it is important that some words be said to you, because a lot of stuff that has been said.

I can look at it from the standpoint of stating to you what the issues are, what I believe the facts are, and what the law is. The issue is- the land owned and used by Sartin's at 2918 Casey Springs Rd. is a legal non conforming use; it has been since the City took it into the city limits. He had a business operating there at that time and he continued in that use. The facts are this- Sartin owned the site prior to its annexation in 1989. Sartin was using the site for dumping of yard waste and composting continuously prior to and after the annexation; Sartin and his company has never ceased. The site is zoned R-1. The Zoning of that site was an automatic R-1, because everything that the City took in during the mass annexation was just zoned R-1. The current use is not permitted as an R-1. The site is approximately 7.4 acres. Sartin has not extended the use beyond the area encompassed by the 7.4 acres. The use was lawful prior to the annexation; it was out in the County. It was brought in and continued for 19 years. The current use is lawful under state law and regulations issued by the ADEQ.

Mr. Mooney: The City Planner told you that he did not know it was a nonconforming use at the time he cited Sartin, and Sartin ceased operation based upon the action of the City Zoning Officer. And he was closed not because he was doing something wrong about the operation of the business; he was closed on the premise that it was improperly zoned- it was R-1.

The law is clear as to what has happened in the situations like that. And I pointed out to you before, there are numerous businesses operating in the City of Jonesboro today that are in an R-1 area. An example I gave you before is the service station out on Highland across from Highland Forest Subdivision; that service station has been continually in operation in the R-1 area for many years, because it was out in the county. And, when it became under the code for the City of Jonesboro, it continued as a nonconforming use and will remain until it closes or changes- make it into a restaurant- they couldn't do that. If the wind blows it down they aren't going to be able build it back. It is a true nonconforming use, and truly it is the same situation for Mr. Sartin as it is that operation. To close him down, in my opinion, is selective enforcement of the law; which is unfair, not right and is incorrect.

The fact that there are people who object to his business is not the question. The question is was he operating that business; did he continue to operate as the business. He as applied for a nonconforming use operation so he that he can continue to operate, he has been closed by the City.

You can look at the laws and the statues of the State of Arkansas and the ordinances of the City of Jonesboro. Clearly he was closed down by the Zoning Office; not by the Board of Zoning Adjustments, not by the City Council. But by the City of Jonesboro, operating under the belief of that he was operating in an R-1 area, and he couldn't do that. And as I say, the Zoning Officer told you, he didn't know, he didn't understand that it was a nonconforming use situation.

Mr. Sartin then started trying to get his business started up; it was very difficult for him. He went to the Planning Commission, he went to City Council then finally ended up here where he is requesting that he be permitted to continue his operation.

Clearly under the statues and under the ordinances, the Zoning Officer has the right, and could have just simply lifted the thing and gone back in. However, he chose to give it to you and let you make the decision.

The law is clear under Chapter 14.12. *Where the land was used in a lawful manner prior to annexation, when after the annexation, its use is unlawful due to the regulation for that annexation district the land and use can continue as a legal non conforming use subject to certain occurrences. (You stop using it, change the character of it, you do other things..) The land can be maintained and repaired and these actions will not affect the legality of the nonconforming use.*

Mr. Mooney: *The land (that is the site) if it is not used for 6 months under the ordinance, it loses its nonconforming status. The site cannot be expanded or enlarged beyond what existed on the date of annexation; and alterations to the site are permitted if required by law.*

Based on the facts and applying the law as contained in the ordinance, Sartin is entitled to continue to use this site for waste dumping and composting. This is simply an application for registration of a nonconforming use which has been in operation since its annexation into the City of Jonesboro.

Now the people that are opposing this including the City Attorney, are saying, "*oh this is a dangerous thing*". Mr. Sartin is now and always has been controlled by the State of Arkansas; they come out and they inspect him just like they inspected the City of Jonesboro. Mr. Sartin is not running a dump there as they would like to indicate that he is. He is in the yard business. He's got a pretty good size operation. When we were here before, we had all his crew here. We went through a horrible situation in Jonesboro; he had no place to take his stuff. Everybody was completely and totally covered up with debris. And he had no place to put it, no place to go. He stayed in that situation all this time, trying to do the right thing about trying to get his business back into operation.

It would be like the Zoning Officer were to go out to Highland Drive, and say to the service station operation out there, this is an R-1 area, you can't operate there anymore. *Same thing.* So what does that guy do? He comes before you and registers as a nonconforming use. Because no where are you required to do that. If you are in operation, and they bring you into the City, City ordinances apply; then you automatically have the right to operate your business as a nonconforming use. And we simply file a petition to recognize that.

Now this man has been everywhere; He has been to the Planning Commission, City Council. At the City Council the issue of nonconforming use was raised. They were asked to permit him to do that. Their response was- and the City of Jonesboro, and the City Attorney's response was- this matter is only about zoning and it has to go the before the Board of Zoning Adjustments. Then we get down here and all they are hollering about is *this is not the right place. You don't have the right to do this; you don't have the jurisdiction for it.* I tell you, you do have the jurisdiction for it. He is entitled to operation his business. He should be put back in operation. He should have been put back in operation by the Zoning Officer. But he has left it to you. And I am trusting that you will put the man back into operation. If that doesn't happen, he either has to shut his business down or he has to take the matter up on appeal, to continue to litigate this situation. It's a huge financial burden for him and all the people who work for him. It doesn't affect the people who are objecting much other than the fact that they have been living next to a landfill for years. They don't like it, they don't want it; they don't want him there. They want you to close his business and I understand their problem; and I understand what they are saying; but, the right thing is not to put this man out of business, he is a nonconforming use. I think he has met all of the requirements and I

believe that you should register him as a nonconforming use. Thank you. (Time mark: 49:27)

Mr. Lyons: (Time mark: 49:50) I am not sure if you all want copies of all of these citations or violations. I told you I would have those available for you.

Mr. Roberts: Same ones we got?

Mr. Lyons: I gave you the synopsis, but I did not give you all the violations. We gave you some the other day, 6 or 7; actually there were 18 violations that occurred in an 11-year period.

Mr. Mooney: I was told that we would not be putting on any other evidence, that we would come and argue the case on the evidence that is before us. I understood we were not going to do that. We came for making statements.

Mr. Gilmore: I think we got a pretty good gist of those problems. Is that a further elaboration of those same things from the other day?

Mr. Lyons: Yes, essentially the same from the other day. It included the pictures from the email from today and the synopsis those were included in that email.

As I indicated last time when we were here, it is our position that this is the wrong place. Not that I don't think you are competent to hear this, you are and you will do a good job, and I know you would make the right decision. We simply are required to follow the law. And the law is under 14.20.03 (a)2, it provides what the law is when an L.U.O. is sought. It says that *an L.U.O. district may be applied in combination with any base zoning district. The designation may be requested by an applicant or proposed by the Planning Commission or City Council during their consideration of a rezoning request.*

If you look at the application it specifically provides- it says current use composting proposed use is an I-2 LUO for composting. So he is asking for an L.U.O. for composting. It is not my application, I didn't change it. (Time mark: 52:40)

That's what Mr. Sartin provided; and the City has adopted the code and the code says that this is to be considered during a rezoning request. And this is not the place for a rezoning request. So we are in the wrong place. But regardless, I understand he may have been told by the City Council- *go to MAPC or vice versa*. But, that was the issue he should have taken up with them, *hey we are in the right place, and here is why* and have them decide and I understand that they did. But regardless it's our position that we are in the wrong place.

But more importantly, even assuming that if ya'll decide that we are going to decide this case, in the letter that I wrote you the other day in regard to the law- the law is quite clear that Mr. Sartin has the burden of proof. And this is in the letter that's dated the 28th of April. It says the applicant has failed in his burden of proof. The burden of proof is

defined in Black's Law Dictionary as the duty of affirmatively proving a fact or facts in dispute or an issue raised between the parties in a cause. And it's not an issue, not a question about that, but it's simply a statement of the existing law.

Mr. Lyons: Mr. Sartin is required to prove every element that is necessary under the existing code. Which means he must prove that the use has been going all this time; he must prove the extent of the use; because he is asking for the full 7.34 acres; he must prove that the use has been continuous and he must prove that he was composting out there. (*Time mark: 54:38*)

So let's think about the proof that he provided the other day. He said that this property was leased out to two different tenants during periods of time. So he wasn't out there using it. So first of all he hasn't met the burden there. Second, Mr. Mooney admitted that he wasn't using all 7.34 acres. If you looked at the pictures that I provided you during the hearing last week, you saw that he was using probably an area from where I am standing to the walls. This is what he was using. He was using a quarter of an acre, maybe half an acre. (*Time mark: 55:23*)

And you don't get to keep adding to that. You have to use... assuming that he was composting out there which I will get to in a minute; which he wasn't doing. But even assuming he was composting, he was only using probably a half an acre. So he now wants to expand that to 7.34 acres. And he simply has failed in his burden of proof.

Because the law is quite clear. Mr. Mooney admitted that. You cannot be expanded or enlarged beyond what existed. On the date of annexation, well in 2001 it was so small you could barely see it in the snap shots that we had. And so he has no proof what so ever that he was using the full 7.34 acres at that time. And that's what he's got to prove to you all. And that is simply not what occurred. And yes, I have some sympathy for Mr. Sartin, it's not that I don't. But, it doesn't matter what the sympathy is or where the sympathies lie; It simply is this is what the law says and we are required to follow the law. My clients are required to and Mr. Sartin should be required to also. And so it's quite clear and simply that he has not done that. He has not met his burden of proof. (*Time mark: 56:53*)

Let's talk about composting. They claim that he was composting. Yet, Mr. Sartin told you that he was burying this yard waste out there. And if you read the letter today, you'll see the law provides; the United States Environmental Protection Agency specifically says burying is not composting. There are four ways to do composting. You do windrow composting, you do aerated static pile composting, you have a vessel in which the composting is done you have aerating and moisture, or you do anaerobic processing and that's where the materials are placed in a mechanical system that includes a blend tank, a plug flow reactor, then use of an aerobic reactor and then the materials are turned into a humus. That's the end product for the composting process.

Mr. Lyons: You saw the pictures that I provided the other day, you saw the pictures that were attached to the reports. None of that was being done. We never had windrow, aerated static pile, in-vessel composting, or anaerobic processing. Mr. Sartin claims, oh the EPA says you can bury this stuff. Well all you have to do is look at the EPA site; which I provided you the law on that. And that simply is untrue. They do not provide for burial as a method of composting. (*Time mark: 58:35*)

Mr. Lyons: You remember that Mr. Spriggs went out there and he said, *I couldn't tell it was nonconforming use*. Because there wasn't anything there. Everything was buried. When he went out there, he had no idea it was a nonconforming use because he didn't know he was composting out there. And that was 4, 5 or 6 months ago whenever it was Mr. Spriggs went out there. And so it's simply a situation where Mr. Sartin wants to come in and say oh well you should feel sorry for me because this is going to hurt my business. Well he has been operating his business just fine, he has 60 or 70 employees who are working and this is a hard time of the year for them as far as the number of hours that they work. Well he is taking this stuff somewhere; it may cost him a little money to do that but he is doing that. But he is doing that. (*Time mark: 59:30*)

Finally, what does... if you talk about this what do the signs that he put up mean? Well if you looked at the EPA stuff that was included with my letter. You saw that you are not suppose to be producing methane gas. That methane gas specifically is something that is that is dangerous; it can move underground and is explosive.

Now if you all want to allow someone who has been burying composting materials but not composting them for 20 years, to continue to operate, then you all may decide that that's the right thing to do.

But this gentleman has made this an area an area that is dangerous. And he went and posted signs out there saying be careful don't come near this, don't come on this property because there is methane gas. (*Time mark: 01:00:42*)

But if you read the EPA's website, and the legal information that I provided you in that regard, you'll see that it specifically says it is an explosive gas which can move underground. It may or may not have move underground under these people's houses.

That's not a legal lawful use that's been going on for 20 years. He hasn't been composting out there for 20 years. He has been burying this in violation of the law. He's created a situation which by his own signs is a dangerous situation for the City of Jonesboro, for the residents of Jonesboro and more specifically for the inhabitants of the area nearby.

And it simply is a situation where the sympathy may be: *oh we don't want to make it hard on Mr. Sartin*. Well Mr. Sartin has made it hard on himself. He is the one that created this situation. Not you all, not me, not the City of Jonesboro. He chose to go out there and to bury this stuff for 20 years. He chose to operate that in an un-manned fashion as you saw from the reports the other day.

Mr. Lyons: He chose to continually violate the law 18 violations in 11 years. And so it's a situation that Mr. Sartin has created a situation for himself. And all he is trying to do now is come in and say, *oh it's going to ruin my business*. Well it hasn't ruined his business, he is still in operation; he is out there operating today. His people were in my neighborhood working this morning and they are still working. Probably went home now because of the rain but I guarantee you tomorrow if its dry, they will still be working tomorrow when its dry they will be working and next week they are still going to be working. So it is simply a situation where his plea that you to be sympathetic to me is something of his own doing and the fact it has cost him some money is not the proper decision maker in this instance. The safety of the citizens of Jonesboro and following the law is. And in this particular situation, Mr. Sartin has not followed the law because he has not proven all of the elements as-is required and this is not safe for the citizens of Jonesboro and it should be denied.

Mr. Crego: I have nothing further, but I am available to answer any questions of the Board.

Mr. Gilmore: Otis, won't you speak to about why we are here with this being before this Board; talk about Jim Lyon's first objection.

Mr. Spriggs: Mr. Lyons is correct. When the application was turned in, as you saw on it, it asked for the actual use and what the request is and they mistakenly wrote in to be zoned to Limited Use Overlay. And, I am assuming that was a "typo". Also with the request it was specified in the letter of attachment what they were specifically asking for and in this instance; they actually filled out the application for the approval of a nonconforming use and that is how we processed it. We actually had the case publicized as such, and that's what you were presented the materials for is to act on the approval of a nonconforming use; you are not entertaining a rezoning at this time.

Mr. Gilmore: Chair will entertain a motion to approve or deny Mr. Sartin's request.
(Time mark: 01:04:54)

Mr. Wagner presented questions to Mr. Sartin. This has been a long process, 1982 and on. We have heard a lot of matter back and forth. This word compost and the use you had in 1982; I have a problem with that right now. You said you want to use the facility. Can you explain to me today, if you are going to use that facility how is it going to be used?

Mr. Sartin: Whatever ADEQ tell me to do.

Mr. Wagner: How do you want to use this facility? Are you going to continue to dump? Are we going to use it as a compost facility?

Mr. Sartin: As ADEQ tells me to do. That's the rules. Whatever they come in and tell me to do. That's what I've got to do. So basically it's going to be what their rules say for me to do, and that is composting at this point. And it's been changed.

Mr. Wagner: In 1982 where you composting?

Mr. Sartin: In 1982 they would let us bury it.

Mr. Wagner: In 1989, were you composting?

Mr. Sartin: I was still burying it. I have not had to put the actual composting machines on there until this year when they are pushing us to do the composting.

Mr. Wagner: When you filed for your permit...

Mr. Sartin: I filed for my permit since 1984.

Mr. Wagner: When were required to file this operating plan- what you were going to do with the property, and why was that required?

Mr. Sartin: By ADEQ.

Mr. Wagner: When?

Mr. Sartin: Started end of 1983 to 1994 it took us a while to get the license.

Mr. Wagner: Have you read the operating plan lately, do you know what it says, or what you said you would do or how you would use that property? Have you done any of that?

Mr. Sartin: I'm making strives towards what I've got to do.

Mr. Wagner: Can you give me some examples, because I haven't walked on that property; I've read the operating plan.

Mr. Sartin: I haven't done anything since October because I have been shut down. But yes I am making strives to meet the ADEQ requirements. It's no difference than in the City. The city has to follow... The mayor said it the other night best... that ADEQ supersedes the City of Jonesboro period. It don't matter what Jonesboro says ADEQ supersedes us. Now I fall under the same rules as the City of Jonesboro no difference. To me what we are here talking about tonight is- Was I in operation not what I was doing. And I think it says in the laws; Otis said that if we are regulated to make changes, then we are allowed to make those changes; am I not correct on that? What I am doing today could change in 6 months, if ADEQ says to change. That part, I can't tell you what they are going to say. Just as we can't decide on what they are going to do on storm water management for Jonesboro. No use for me going through this long process of composting when I can't tell you. I am just being honest, because it has changed every year with them.

Mr. Roberts: In your application it says Williams and Sartin Composting Site, is he a co-owner or is he a just co-owner of the operation that takes place on the property?

Mr. Sartin: He is a co-owner.

Mr. Roberts: Of the property or the business?

Mr. Sartin: As part of the property.

(Time mark: 01:10:11)

Mr. Roberts made a motion to approve the Non-conforming use but subject to the following stipulations:

1. Acquiring of a state license/permit to compost does not exempt the use of the property from the Zoning Approval. *For example in my opinion, if you want to fully operate a composting facility you cannot do it there because it is not properly zoned for that.*
2. By description, this is not a Composting Facility. It is a Green Waste Storage Site.
3. The site shall be accessed only by Sartin's Landscaping Company or Williams Tree Service (co-owner), (Public Use shall be prohibited, *no public bringing in waste there*). Any other business transactions shall be prohibited. No more renting or leasing there. Inspections by public agencies shall be exempted. *Any time the government agencies can come in and make sure that you are adhering to these rules.*
4. There shall be no permanent nor temporary structures erected on the premises.
5. Any chipper equipment and other equipment necessary to move material shall be located on the premises only temporarily. The equipment shall be stored, repair and maintained at 3703 S. Culberhouse, which is where the main lawn care business is located.
6. The entire 7.34 acre tract shall be fenced completely around the perimeter with a locked gate maintained with a pad lock. No unloading or material handling shall be disposed of beyond this fenced perimeter. Only authorized personnel from Sartin's Landscaping, William's Tree Service or Public Agencies shall be allowed to access the property.
7. An all weathered road (*compacted SB-2/chat*) shall be maintained at all times suitable to uphold fire-fighting equipment. A drive serving said green waste site shall satisfy minimum paved apron standard with the first 100 ft. to be paved in accordance with City Engineers standards to prevent illegal debris, soil, mud or dust from entering street right of ways.

8. All impoundment pond(s) shall meet the ADEQ standards and surface runoff regulations of any and all local and state agencies.
9. This site shall be used specifically for green waste only. Yard waste shall be permitted to be processed on this site. Such waste only includes: grass clippings, leaves, shrubbery trimmings, and any organic plant waste from the landscape or nursery operation. All non-compostable fill or materials shall be prohibited from this site and shall be disposed at some other regulated location.
10. Windrows which are required by the ADEA shall be piled and limited to an area not exceeding 12' wide by 5' tall.
11. The windrows shall be covered with dirt (this doesn't mean to dig a hole and bury them) on a monthly basis and turned periodically in accordance with ADEQ standards.
12. Once end-product is complete it shall be removed from the site and delivered to an approved location for retailing or marketing to the public.
13. Dust, litter, and odor controls shall be maintained to prevent any public nuisance. If a public nuisance should develop and be determined by the Board of Zoning Adjustments, the use of the premises shall be terminated as a non-conforming use within an R-1 Zoning District.
14. Burning of any material shall be prohibited.
15. All areas not being used for the processing operation shall be fertilized, seeded, and mulched to obtain a vegetation cover to prevent further erosion.
16. Hours of operations shall be limited to 7:00 AM to 5:00 PM Monday through Saturday only.
17. A revised and final layout plan shall be presented to the Board for final approval delineating the above requirements, location of all the windrows/process locations, impoundment ponds, access drives meeting minimum standards, fencing, etc.
18. Final approval shall be issued by City Planning, Fire Inspections and Engineering upon review of the final plans.
19. The use of this property shall never be expanded in size nor use. Operation as a full public/commercial composting facility shall require the proper Zoning District.

20. Line of yard waste processing shall be limited to a set back from the East, West and South boundaries at 50 ft. minimum and with no allowance for expansion.
21. The Green waste processing shall remain in permit compliance with ADEQ Solid Waste Division and any regulating agency that is applicable.
22. Any signage shall be limited to directional signage and one ground monument sign in compliance with signage code set back and size restrictions.

Board Action:

Motion made, seconded by Mr. Wagner. Roll call vote: Mr. Roberts, Aye; Mr. Wagner- Aye; Mr. Gilmore- Aye.

Mr. Roberts: Having heard these terms, do you think you can agree to these terms?
Mr. Mooney: We certainly understand what you say. We have a court reporter here who is taking that information down, and I understand that you have passed it with those stipulations; we are going to do everything we can to try to accommodate what your desires are; we have to study those things and we will do that.

Meeting was adjourned.

(Time mark: 01:17:08)